IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.P. No.5 of 2003 (O&M) and
C.A. No.204 of 2007 and
C.A. No.783 of 2008 and
C.A. No.130 of 2009
in C.P. No.71 of 2000
Date of decision: 15.05.2009

M/s Punjab National Fertilizers & Chemicals Ltd. (in liqn) through Official Liquidator

.....Petitioner

Versus

Punjab National Bank and others .....Respondents

Present: Mr. Puneet Kansal, Advocate
for Official Liquidator.

Mr. K.D. Aggarwal, Advocate.

Mr. B.S. Walia, Advocate.

Mr. Maninder Arora, Advocate.

Mr. R.M. Suri, Advocate.

2. **C.A. No.231 of 2008 in C.A. 370 of 2007 in C.P. No.7 of 1996**

Scanomax India Limited (in liqn) thorugh Official Liquidator

.....Applicant

Versus

Punjab State Industries Development Corporation and others

.....Respondents

Present: Mr. Puneet Kansal, Advocate
for Official Liquidator.

Mr. B.S. Walia, Advocate.

Mr. Amit Rishi, Advocate
for Mr. G.S. Anand, Advocate.

Mr. Ajai Saini, Advocate
for Mr. Manish Jain, Advocate.

3. **C.A. Nos.784-785 of 2008 in C.P. No.7 of 1996**

Chariot Security Services Private Limited .....Applicant

Versus

The Official Liquidator and another .....Respondents

Present: Mr. Maninder Arora, Advocate
for the applicant.

Mr. Puneet Kansal, Advocate
for Official Liquidator.

Mr. B.S. Walia, Advocate
for respondent No.2.

Mr. Vikas Chatrath, Advocate.

4. **C.P. No.119 of 2007 (O&M)**

5. **C.P. No.120 of 2007 (O&M)**

M/s Varsed Detective and Security (P) Ltd. .....Petitioner

Versus

The Official Liquidator and others .....Respondents

Present: Mr. Vishal Aggarwal, Advocate
for the petitioner.

Mr. Puneet Kansal, Advocate
for Official Liquidator.

Mr. Jatin Kumar, Advocate.

Ms. Aarti Vashisht, Advocate for
Mr. Rohit Sapra, Advocate.

Mr. Kamal Sehgal, Advocate.

6. **C.P. No.9 of 2009 (O&M)**

Guardian Industrial Investigation and Security Services Ltd.

.....Petitioner

Versus

Indo Gem Lamination Ltd. (in liqn) through Official Liquidator & Ors

.....Respondents

Present: Mr. K.D. Aggarwal, Advocate
for the petitioner.
Mr. Sanjiv Ghai, Advocate
for the Official Liquidator.

Mr. Amit Rishi, Advocate
for Mr. G.S. Anand, Advocate.

7. **C.P. No.11 of 2009 (O&M)**

Guardian Industrial Investigation and Security Services Ltd.

.....Petitioner

Versus

AVI Shoes Ltd. (in liqn) through Official Liquidator

.....Respondent

Present: Mr. K.D. Aggarwal, Advocate
for the petitioner.

Ms. Puneeta Sethi, Advocate
for the Official Liquidator.

8. **C.P. No.21 of 2009 (O&M)**

Guardian Industrial Investigation and Security Services Ltd.

.....Petitioner

Versus

La Medical Devices Ltd. (in liqn) through Official Liquidator & another

.....Respondents

Present: Mr. K.D. Aggarwal, Advocate
for the petitioner.

Mr. Sanjeev Ghai, Advocate
for the Official Liquidator.

Mr. Samarth Sagar, Advocate
for PICUP-respondent No.2.

9. **C.P. No.31 of 2009**

Guardian Industrial Investigation and Security Services Ltd.

.....Petitioner

Versus

Punjab Wireless Systems Ltd. (in liqn) through Official Liquidator & others

.....Respondents

Present: Mr. K.D. Aggarwal, Advocate
for the petitioner.

Mr. Puneet Kansal, Advocate
for the Official Liquidator.

Mr. Ajai Saini, Advocate
for Mr. Manish Jain, Advocate.

CORAM: HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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K.KANNAN, J.

1. The basis of claims:

1. The batch of company petitions/applications take up the same issue relating to the entitlement of watch and ward expenses in respect of which reports have been made by the Official Liquidator for engagement of services of various security agencies and to whom the charges are payable in the course of liquidation. In all these petitions/applications, the directions are sought for against the secured creditors for payment of the expenses. The empanelment of the security agencies themselves are not in dispute. The remuneration and charges fixed for the works assigned to them at various sites of factories and industrial houses, which are in the process of liquidation are also not in dispute. The creditors have been drawing their feet and not expressing willingness to part with the payments. We have a piquant situation at hand, where the Official Liquidator himself has been supporting the causes of the secured creditors as if to suggest that the unwillingness or the non-payment of the watch and ward expenses called for from them in his application is unjustified.

2. This has resulted in the various security agencies filing the petitions/applications for direction for payment of the charges, for which it is represented that invoices have been raised on the Official Liquidator. The petitions/applications in respect of the claims made by the security agencies have been pending without being attended for several years.

II. <u>The terms of initial engagement of security services:</u>

3. In the minutes of the meeting held on 02.04.2002 at 11.30 A.M. in the office of the Official Liquidator, Punjab and Haryana High Court, Chandigarh for empanelment of the security agencies, names of 18 security agencies have been approved (Annexure R-8). (A written statement has been filed on behalf of the Official Liquidator in C.P. No.5 of 2003 filed at the instance of Guardian Industrial Investigation and Security Services Pvt. Ltd. The reference to the annexures shall be with regard to the documents as filed along with the written statement by the Official Liquidator in C.P. No.5 of 2003.) The minutes disclosed the fact that the empanelment was being considered on the basis of applications received by various security agencies in response to advertisements made in the newspapers by the office of the Official Liquidator. In view of the differentiation in rates cited by the various security agencies, attempt had been made to make uniform rates and a meeting had been called for on 24.05.2002 at 11.00 A.M. at the office of Registrar of Punjab and Haryana High Court. This had yielded to a subsequent meeting on 29.05.2002 where a grading had been given depending on several factors such as the years of experience, number of staff employees, financial details of the

security agencies etc. The minutes recorded on that date evidence the fact that the Committee after deliberations had decided to pay miminum wages as prescribed by the concerned State Government plus 7% as agency charges, a euphemism employed to cover the statutory liability that may require to be borne by the respective security agencies. By this process, the office of the Official Liquidator was trying to absolve itself all its liabilities to make Provident Fund, ESI and other contributions.

III. <u>Reasons for accumulation of unattended claims:</u>

4. A provision that was made for avoiding the liability with reference to statutory contributions has now become the focal point for determination of the actual deployment of the security personnel at the rerspective sites of the factories where the security agency's services had been requisitioned. If only there had been periodical checks and inspections made at the site and if it had been pointed out either by the office of the Official Liquidator or by the secured creditors that the security agencies had not deployed the requisite staff in reference to the number of men to be deployed or if the watch and ward expenses had been periodically paid on a monthly basis, we would not have come to the situation that we have now arrived at. The dilly-dallying has been occasioned on account of the reluctance of the secured creditors to make upfront payments for the charges of protecting the secured assets for their own benefit to ensure that their security is not lost and waiting till the assets themselves were sold by the Official Liquidator and financial resources had been garnered to make the payments of watch and ward expenses. The bills had been allowed to be accumulated over

a period of time. What would have been manageable, if the periodical amounts had been made seem to obtain gigantic proportions running to several lacs and crores and on the presentation of such high volumes of claims emanating from the security agencues, the Official Liquidator himself has joined issues with the security agencies to doubt the genuineness of the claims.

IV. <u>Objections to the claims of Security Agencies enumerated:</u>

(i) General

5. To the respective claims of the security agencies, the objections have come principally through the office of the Official Liquidator on the following lines: (i) the 7% agency charges, which were supposed to be paid recorded an admission of liability of the security agencies to pay Provident Fund and ESI contributions, which also was to offer evidence of actual number of persons that had been deployed by the respective security agencies. In the absence of any details regarding Provident Fund and ESI contributions, the genuineness of the claims of the security agencies cannot be accepted; (ii) the order of empanelment for the security agencies to receive 7% of the aggregate amount payable to the staff as minimum wages towards agency charges also created a corresponding duty to give the details of contributions made on their behalf with the money so collected and in the absence of such proof, the security agencies cannot pursue their claims towards watch and ward expenses; (iii) the several demands requiring proof of contributions to ESI and Provident Fund had not been responded at all by the various security agencies and their belated explanations that they were not liable to make contributions on behalf

of the staff employed by them betrays absolute falsity of the stand of the security agencies. This contention is made with reference to a specific notice issued to 7 of the security agencies by the office of the Official Liquidator on 22.09.2003 (R-5) demanding information for the details of the contributions made to the Provident Fund Commissioner w.e.f. 01.07.2002 to 31.07.2003. The reason for making such demand was sought to be explained through Annexure R-6 where it was pointed out that the verification of the requisite number of security guards were deployed at the factory premises could be made only on furnishing proof of the Provident Fund statements along with the list of security guards employed during the year 2002-2003. A threat of replacement of the staff and de-panelment was made through the notice dated 05.11.2003 contained in Annexure R-7 if the details were not forthcoming.

(b) Specific instances

6. (i) Apart from a uniform objection made to the claims of several security agencies, specific objections have also been taken by the Official Liquidator with respect to the specific security agencies also. As regards Guardian SecurityServices, the contention on behalf of the Official Liquidator was that it was not one of the empanelled security agencies and the claim by it is not tenable. The empanellled agency was only Industrial Security and Fire Services Bombay Pvt. Ltd. With reference to the claim of Guardian Industrial Investigation

and Security Services Ltd., the objection is that it is a private limited company and a copy of the resolution of the Board authorizing the particular person who was making the claim not before the Court. It was pointed out on behalf of the Official Liquidator that the power of attorney, which has been given by the Chairman only records the fact that he was a Director but it was not clearly indicated as to how, he was competent to sign and verify the pleadings put in Court. Pointing out to the signatures found in C.A. No.130 of 2009 of Sh. Santosh Singh, learned counsel appearing on behalf of the Official Liquidator wanted to contend that even the signatures seemed suspicious.

(ii) In respect of Chariot Security Services Private Limited, there had been already a direction issued by this Court on 18.03.2004 requiring M/s Chariot Secuirty Services Pvt. Ltd. to report about the status of security and payments, which they had made to the security personnel from time to time from the day when the services were invoked. There was a direction to supply copies of all the relevant documents to the secured creditors by a particular date. This Court by an order dated 10.09.2004 had directed the Managing Director of M/s Chariot Security Services Pvt. Ltd. to give an affidavit of the

number of security guards deployed along with the names and addresses. The attendance record of the security guards was also required to be produced. The order dated 20.07.2006 records the fact that the relevant record of M/s Chariot Security Services Pvt. Ltd. had been submitted in the office of the Official Liquidator along with the C.A. No.204 of 2007. The Official Liquidator has placed on record the audit statement of M/s Chariot Security Services Pvt. Ltd. which states that as on 31.03.2005, the amount shown as due from the Official Liquidator is Rs.13,81,458/-. This is pointed out by the counsel as contradicting a larger claim, which is made by M/s Chariot Security Services Pvt. Ltd. in C.A. No.784-785 of 2008.

(iii) As regards the claims of M/s Varsed Detective & Security (P) Ltd., the attempt on behalf of the Official Liquidator was to show that the company had been engaged not only in extending security agencies but also that they were extending services as management consultants as found in the audited statements and consequently, the balance sheet referring to the outstanding dues could not relate only to recevables under the head of security services.

V. Reply to objections by Security Agencies:

7. The objections raised by the Official Liquidator have been responded to by the respective agencies by pointing out that they were not themselves liable for ESI or Provident Fund at all, the Official Liquidator as being principal employer was liable for such contributions. According to them, the genuineness of the claims cannot be put to test on a fact whether Provident Fund and ESI contributions were made, for, if indeed they had been so done, there were different consequences attached by such a lapse and the lack of proof ought not to be a ground for rejection of the claims themselves. No specific instances of any lapse on the part of the Security Agencies have been pointed out by the Official Liquidator and it would be unjust to doubt the genuineness of the claims or defeat their rights to claim the watch and ward expenses by the only fact that the balance sheets of some of the security agencies do not reflect the entire amounts that are now claimed through the respective applications. Particularly the Chariot Security Services Pvt. Ltd. and M/s Varsed Detective & Security (P) Ltd. pointed out that if there are any discrepancies between what had stated in their balance sheets as amounts due from Official Liquidator and what are claimed in the petitions, they are only on account of the fact that only such amounts for which invoices had been made have alone been shown in the balance sheets and the whole of the amounts recoverable have not been shown only to lessen the tax incidence and the liability of service tax, which would be attracted on amounts declared as recoverable, if they had been shown in the account books. The alleged lack board resolutions for presentation of the petitions

before this court could not be a ground for rejecting the claims themselves, for even without such petitions before the court, the OL and the secured creditors are liable to make the payments as per the terms of initial engagement.

VI. Rejection or delay in payments, unreasonable:

8. I have given my thoughtful consideration to the entire case about the nature of objections that have been emanating from the office of the Official Liquidator and the secured creditors. It can be seen that all the claims of the watch and ward expenses raised by the security agencies are disputed by the Official Liquidator not out of any clear ascertainment that the whole lot of claims are spurious. It is again not the contention of any of the parties that the Security Agencies had not employed their personnel, except to point out of a solitary incident in respect of one security agency that at the time of inspection, it was seen that there were no security staff. While any lapse on the part of the security agency could entail removing the security agency or if there had been any loss occasioned by such lapse, there could have been a claim against such security agency for the loss that occurrred if negligence was established, the general objections, which are raised to dispute the claim cannot be justified by the non-furnishing of details relating to payment of Provident Fund or ESI contributions. When the contention of the security agencies have been that they have not paid the ESI or Provident Fund, it will be begging the question to demand proof of such payments for realising the amounts claimed by them. As contended by the security agencies, the issue before this Court is not whether they were justified in not making Provident Fund or ESI

contributions or an adjudication about who among the parties, viz the Security Agencies or the Official Liquidator, was liable to make the contributions to Provident Fund Commissioner and ESI. While determining the issue of the eligibility of the security agencies, legitimately the office of the Official Liquidator could obtain proof of the list of persons who had been deployed and the payment of Provident Fund and ESI could also be additional factors for cross-checking on the genuineness of claims. In my considered view, it would be unrealistic to deduce their entire dis-entitlements by the fact that they have not paid Provident Fund or ESI. The whole approach smacks of a lack of realism on the part of the office of Official Liquidator and the secured creditors. The issue has dragged far longer than how the cases ought to have been dealt with. The secured creditors and the office of Official Liquidator alone have to be blamed themselves for not attending to the claims of the security agencies with due alacrity and the swiftness which they were bound to impress their on actions with. They have allowed grass to grow under their feet and the objections taken by them that the security agencies have not given proof for the actual deployment and pointing out to discrepancies in the statements are but unworthy attempts to explain their own laxity and lapses.

9. If any of these security agencies had not complied with the initial demands made by the Official Liquidator in their failure to give proof of payment of Provident Fund and ESI, they ought to have taken steps to de-panel them. Allowing them to continue and still denying to them at the end of the period when demand was made for recovery of the charges at the rates agreed upon is not tenable. Their entitlement

cannot be denied by picking holes on the mode of proof. All the security agencies have stated in unison that all the details relating to the names of persons, who had been deployed as security peronnel have been furnished to the Official Liquidator. All of them also contend that as and when discrepanies were pointed out they had always furnished the necessary clarifications. The objections relating to variance between the balance sheets that made reference to recoverabales from Official Liquidator and their own claims in the respective petitions also, in my view, have no meaning in view of the explanations which have been given on behalf of the security agencies that they have shown only such amounts for which specific invoices have been raised and in respect of proforma invoices that had been raised they were not included in their account statements only to lessen the incidence of tax liability.

10. As regards Guardian Industrial Investigation and Security Services Ltd., the contention was that the empanelled security agency was only Industrial Security and Fire Services Bombay Pvt. Ltd. and therefore, it was not entitled to prosecute the petition through an entity which had not been recognized by the Official Liquidator. Several communications between the parties clearly revealed that one of the Directors not supported Guardian Industrial Investigation and Security Services Ltd. and it was only Industrial Security and Fire Services Bombay Pvt. Ltd. which was extending the services for the various factories and it was entitled to make the claim as a successor-in-interest. The issue need not detain us since at the time of argument, learned counsel appearing for the Guardian Industrial Investigation and Security

Services Ltd. made a representation at the bar that he would have no objection if the bills are settled only in the name of Industrial Security and Fire Services Bombay Pvt. Ltd. Even the objection that the petitions of some of the agencies are not supported by proper board resolutions cannot come in the way of satisfying the claims of the security agencies, since the claims originate from the terms of engagement and the services provided and the petitions have become necessary only because of the lapses on the part of the respondents who have failed to honour the commitments for the value of services had and enjoyed.

VII. <u>The disposition for each of the claims:</u>

11. All the applications filed by the security agencies under the circumstances deserve to be allowed. The objections filed by the Official Liquidator seeking for directions of the respective secured creditors are also ordered and the ultimate disposition is that the Official Liquidator shall forthwith make all the payments for the security staff authorized to be deployed by the respective agencies by examining the list of persons said to have been deployed and working out the rates as payable to the respective security agencies on the basis of rates agreed already together with the service charges as contemplated in the initial orders of engagement. The claims of the security agencies shall be tested only on the authorized strength of the staff and deductions shall be made in relation to specific instances of specific dates when any staff was found to be missing or when it was found that the staff had not been really in their roll of employment. Nothing could come out of the earlier directions for requirement of proof of payment of Provident Fund or ESI contributions now. The only way of dealing with such

situations is to discontinue such Security Agencies and not deny them their entitlements. In the absence of any specific condition in the terms of engagement that the claims would be entertained and amounts would be disbursed only on proof of payment of ESI or Provident Fund to particular number of staff in their employment, neither the Official Liquidator nor the secured creditors could make an issue out of non-furnishing of such proof for denial of the respective claims. The entire process of clarification of records in relation to each one of the security agencies shall be completed within a period of 30 days and the amounts as found on a proper reckoning shall be disbursed from out of the amounts available to the credit of the respective companies in liquidation and wherever they are not available, the secured creditors in relation to the assets where the security personnel had been deployed shall be liable to make the payments and claim refund when the assets were sold and when amounts are realized in excess of what have been paid by the secured creditors.

12. To prevent the repetition of the events of what has been happened now, the following guidelines are issued:-

(a) The requirements as regards the individual companies in liquidation shall be jointly determined by the Official Liquidator in the immediate presence of the secured creditors and all the representatives of stake holders over the asset owners of the company in liquidation.

(b) In determining the participants in the meetings for fixing the security personnel, due regard shall be had to the persons entitled to disbursements under Sections 529A

and 530 of the Companies Act.

(c) The choice of Security Agencies shall be made after advertisement in leading newspapers and a panel drawn from the respondents who not merely offer competitive rates but also of organisations that have a long track record of good performance in this field, preference being given to organisations that employ ex-servicemen.

(d) In the matter of approval of rates, the Official Liquidator shall have a realistic approach of insisting that the wages shall be the minimum wages as prescribed under the respective States where the factory premises are situate and shall also include the statutory levy of service tax wherever it is applicable. The threshold rates for approval cannot be even lower than what the minimum wages are, for, that is really another way of pushing the security agencies to either pay their personnel lower than the minimum wages or induce them to deliberately manipulate with numbers by employing lesser men and claiming inflated bills by making it appear as though more staff had been deployed.

(e) There shall be constant surprise checks at the spot by the secured creditors and the staff of Official Liquidator's office at periodical intervals at the sites to ensure that the number of security men that had been identified as necessary for any one factory premises are actually

employed on field and the possibility of inflating the bills by adding names, who were not employed is completely eradicated.

(f) Whenever it is found that the security agency has been guilty of laches and negligence that has resulted in any loss or theft, an enquiry shall be undertaken immediately to fix the responsibility and take appropriate action for recovery of damages for the loss caused if there is negligence or lapse of the security agency and the same could be done either by separate recovery process or deducted at the time of settlement of the bills.

(g) The action for negligence or lapse and the recovery as indicated above shall be independent of a right to terminate the services after giving sufficient opportunity to show cause against any such action, if the charges of delinquency against the security agencies or the staff are proved beyond doubt.

(h) The prooof of payment of Provident Fund and ESI for the security staff by the security agencies shall be taken as corroborative basis of evidence for ascertaining the number of staff employed in respect of whom the bills are raised but shall not be taken as the only method of ascertaining the strength of staff or the genuineness of the claims.

(i) The genuineness of the claims and the strength of the staff deployed at the respective sites shall be a matter of

constant audit on a bi-monthly or quarterly basis so that if any discrepancies or frauds are noticed, appropriate action for termination of service after a due notice could be taken instead of allowing the same security agency to continue till the conclusion of the period that might give cause to the controversy as are encountered presently.

13. All the company petitions and applications are disposed of on the above terms.

14. A photostat copy of this order be placed on each connected case.

(K. KANNAN)
JUDGE

May 15, 2009
Pankaj*